REPORT

OF THE

ADVISORY COMMITTEE ON

DEVELOPMENT CHARGES

AND OFF-SITE LEVIES

Alberta
MUNICIPAL AFFAIRS

Office of the Minister

224 Legislature Building, Edmonton, Alberta, Canada T5K 2B6 403/427-3744

August, 1986

Advisory Committee on Development Charges and Off-Site Levies

In April 1985, my predecessor, the Honourable Julian Koziak, established the Advisory Committee on Development Charges and Off-Site Levies, composed of industry and municipal representatives under an independent Chairman, Denis Cole. The Committee was asked to prepare recommendations for solving problems associated with development charges and off-site levies.

The Advisory Committee has submitted the attached report containing thirty-one major recommendations. I would like to take this opportunity of commending the Committee on the thoroughness of their work and the careful consideration given to their recommendations. At this time, I am releasing the report for comment and review by those interested, since the impact of the Committee's recommendations could be far-reaching and would, if implemented, require some legislative changes.

It is my intention to provide ample time for comment and review so that all those affected have an opportunity to consider fully the impact of the recommendations and make their views known to the government.

I would ask that responses be directed to the attention of Archie Grover, Deputy Minister, Alberta Municipal Affairs, 9th Floor Jarvis Building, 9925 - 107 Street, Edmonton, Alberta T5K 2H9, prior to November 30, 1986.

Neil Crawford
Minister

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Alberta
MUNICIPAL AFFAIRS

Jarvis Building, 9925 - 107th Street, Edmonton, Alberta, Canada T5K 2H9

In Replying Please Quote:

April 21, 1986

The Honourable Julian G.J. Koziak
Minister of Municipal Affairs
224 Legislature Building

Dear Mr. Koziak,

Lot Levies and Development Charges

Attached is our report on the above noted matter for your consideration.

We are pleased to advise you that all members of the Committee support the recommendations, firstly on the principle of equity and secondly as a consequence of negotiated compromise. We believe the recommendations are both fair and practical.

In carrying out our work, we invited written briefs from those interested. Those briefs, submissions and letters that were received have been carefully examined, including a preliminary survey undertaken by the Alberta Urban Municipalities Association.

A cross section of municipalities was requested to provide detailed financial information and we wish to take this opportunity to express our thanks for their cooperation. In particular we acknowledge the help of Lee Guyn and Donald Barry, from Calgary and Edmonton staff respectively, who were brought in by the Alberta Urban Municipalities Association to provide technical assistance to their members and the Committee.

We also appreciate the assistance and guidance provided by the three Provincial appointees from Alberta Municipal Affairs, Alberta Housing and Alberta Utilities, namely Mr. J. Thomas, Mr. B. Quickfall and Mr. D. Shillabeer.

.../2

The technical and financial advice of Mr. Peter Nichols of Nichols Applied Management proved invaluable, particularly in the difficult area of off-site and oversize utilities and finally the Committee wishes to express a special word of thanks to Dr. Graham Power who patiently recorded our meetings and played a major role in translating our discussions into numerous drafts of this report.

It is our hope, Mr. Minister, that the recommendations will be supported by most, if not all municipalities and members of the development industry, and that you will find the recommendations useful in determining what action, if any, should now be taken.

Denis Cole, Chairman

G. Clegg — A.A.M.D.&C.
Fairview

P. Daly — U.D.I. Alberta
Melcor Dev. Ltd.

L. Dougherty — A.U.M.A.
High River

A. Skoreyko — U.D.I. Alberta
Nu-West Group

A. Foss — A.U.M.A.
Hinton

F. Thomas — U.D.I. Alberta
Genstar Development

L. Gilchrist — A.U.M.A.
Calgary

G. Walker — Alta. Home Builders'
Walker Newby & Assoc.

SUMMARY OF MAJOR FINDINGS AND RECOMMENDATIONS

Issues
Page 7

The Committee identified seven major issues in dispute that were examined in some depth. They were: off-site levies, oversize charges and financing; arterial roads; recreation facilities and park development; administration and inspection; miscellaneous; and legislation, interpretation and conflicts.

Equitability
Page 8

The question of equitability is foremost in many of the issues because the effect of imposing lot levies and development charges is to move certain costs from the general tax base to the new homeowner.

Nature of Levies & Charges
Page 9

The practice of applying levies and charges is found throughout the municipalities of Alberta, but not all municipalities charge for the same services. Many municipalities also require developers to front-end services or provide them as conditions of development agreements.

Impact
Page 10

The Committee found it very difficult to measure the importance to municipalities of lot levies in terms of municipal revenues or the tax base. The impact has been observed to work differently depending on the state of the economy and the rate of growth.

Development costs have been moving from the general tax base to new homeowners in times of rapid growth and in times of slow growth there is pressure to stop or reverse this trend.

Oversize & Off-sites
Page 13

The authority for municipalities to charge off-site or oversize levies in respect of utilities has not emerged as an issue. But concern has been expressed about such matters as the accountability for charges, their methods of calculation, the services and facilities included for purposes of calculation and the risks borne as a result of anticipated, but uncertain, future development.

Problems of Cost Allocation
Page 15

A number of specific problems have been identified. These are: inequitable allocation of costs between the first and later developers in a joint servicing scheme; cost allocation that fails to encourage the most efficient system design given the state of knowledge of growth prospects; allocation that leaves too large a share of capital outstanding after the early years of development, thereby increasing the possibility of large accumulations of interest and carrying charges and the risk that alternative lower cost systems will become available in later years.

Principles of Allocation
Pages 16

The Committee was able to define a number of principles that are expected to assist with the identified problems of allocation.

Roads
Page 23

The practice of levying development charges for the the provision of roads appears to be extensive. After applying provincial grants rapidly growing municipalities still face heavy expenditures for expressways, arterials and major roads, consequently they seek to share this cost burden between the existing tax base and new development through levies or by requiring developers to construct these types of roads in whole or in part at developers' cost.

Types of Road
Page 23

The Committee was able to distinguish between types of roads in terms of the primary users and beneficiaries. The provision of expressways and freeways primarily benefits all Albertans including the municipality as a whole. The neighbourhood road system and neighbourhood collectors primarily benefit the residents of a new neighbourhood. The arterials and major road systems appear to be a shared benefit. Such road systems are mainly required in the larger towns and cities so that lot levies for this class of road are not widespread but have an important financial impact.

Alta. Transportation Grants
Page 23

The current Alberta Transportation grants in Edmonton and Calgary are by choice first applied to Light Rail Transit, Freeways and Expressways etcetera leaving little or no grant funds for arterial roads. The grants appear to be generally adequate to meet the needs of the other Cities during the current period of slow growth.

There are indications, however, that the much lower grant ceilings applicable to Towns are inadequate for those Towns approaching 10,000 (or City size) where the needs are comparable to those of small Cities. Furthermore the grant ceilings do not accommodate exceptional rates of growth which are sometimes experienced by the smaller urban communities. Both of these circumstances place pressure on Towns to maximize the levies they seek from developers.

Recreation
Page 29

The practice of levying charges for recreation purposes is followed by many municipalities although some municipalities have dropped recreation charges in recent years. The charges can be divided into two groups: those for community recreation buildings and equipment and those for the improvement of municipal and school reserves including land grading, loaming and seeding.

Administration
Page 32

A number of different charges and levies were found to be associated with administrative costs. They include, general administration charges, legal costs and engineering inspection fees as well as charges for by-law and subdivision processing and processing of development agreements.

Other Charges
Pages 35-39

A number of other charges were identified, although they do not seem to be employed on a widespread basis. They include operation and maintenance after completing work, survey control monuments, traffic signals and streetlighting.

Agreement on allocation
Pages (viii)-(xv)

The Committee has been able to determine an equitable allocation of all disputed costs in general terms. It is recognized that interpretation, application and special cases make it difficult, however, to lay down rules that will apply in all cases.

Legislation
Page 40

Two views of the existing legislation lead to a very different interpretation of the municipal powers to institute development charges and off-site levies. The Specific Interpretation holds that only those charges specifically authorized by and identified in The Planning Act can be legally applied to new development and redevelopment. The General Interpretation holds that a wide range of charges can be

incorporated in municipal contracts and, provided the documents are executed by both parties, the charges can be applied, under the statutory authority of the Municipal Government Act.

Legisiative Difficulties
Page 43

The Committee has found that a number of charges out-side of those specifically identified in the Planning Act are levied by municipalities using the General Interpretation as a basis for municipal action. It has not been the intention of the Committee to attempt to pass judgement on legality; rather, the question of equitability guided the Committee's deliberations. However an analysis of existing legislation revealed several areas of confusion in the existing statutes that have given rise to problems in practice.

Financial Implications
Pages 47-53

A survey of selected municipalities showed that the net effect of the Committee's recommendations would be to shift a certain part of the cost burden away from lot costs in newly-developing neighbourhoods onto the general municipal tax base and/or utility user rates. Based on an average of years 1981, 1983 and 1985 the movement ranges from a high of $1400 per lot in smaller centres to as little as $400 per lot in larger centres. The impact on the municipal tax levy ranges from about 5% in smaller growth

centres to less than 1% in larger cities. The effect on property taxes on a typical residential property is small in all cases. The most significant shifts occur as a result of the recommendations on roads and recreation. The impact of the recommendations in all other areas is negligible. The impact of the recommendations in 1985 would be substantially less due to slow growth and reductions in charges.

Implementation
Pages 54-61

The Committee reviewed the recommendations of the Nichols report in terms of maintaining the status quo, recommending more restrictive legislation, or deregulation. The Committee was not satisfied that either the status quo or more restrictive legislation would solve the problems and issues that have been identified and reviewed, and favoured a move in the direction of greater flexibility and deregulation.

Recommendations
Pages (viii)-(xv)

The following recommendations summarize the Committee's views of the steps necessary to ensure a fair and equitable system of lot levies and development charges. Agreement was reached among the members on the nature of the recommendations and their method of implementation.

SUMMARY OF RECOMMENDATIONS

Utility Oversize & Off-sites

1. The principles set out for allocation of charges and methods of financing utility oversize and off-site costs are recommended for reference and application by municipalities and the development industry. Seven principles of equitability for utility oversizing and off-site charges are recommended, dealing with: financing; economies of scale; trunks, oversize; on-site service; limits on charges; and government grants and subsidies. Two principles for treatment, storage and disposal facilities are recommended dealing with cost allocation to beneficiaries. These principles should be adopted and utilized by all parties involved in allocating costs and financing off-sites and oversize capacity as soon as is practical. It is recognized however that existing practices of cost allocation may be difficult to adjust quickly and the recommended changes may take some time to apply. It is recognized that a number of methods of cost allocation have been satisfactorily negotiated between the industry and particular municipalities, but none appear to share the costs as equitably, nor do they minimize the long term risk of the initial investor as effectively as the method now proposed.

Roads

2. Continuous transportation corridors, and expressways and freeways which are usually constructed in the major cities on an approximate three mile grid, are of primary benefit to the municipality as a whole, and to all Albertans, and should be financed by provincial funding and the general revenues of the

municipality and should not be the subject of development charges or lot levies.

3. Arterials and major roads benefit the municipalities as a whole and all Albertans but are also required to provide access to new development. The contributions by the development industry to such roads should not exceed 12.5% of the total cost. This is based on the proposition that such roads are eligible for 75% financing from the Alberta Transportation Basic Capital Grant leaving a balance of 12.5% to be funded by the municipality, and that recommendation 4 below is adopted.

4. Developers' contributions should not be increased where a municipality chooses to apply its transportation grant to other eligible items or has reached the grant ceiling. However, it is recommended that the Alberta Transportation policy be amended so that the 75:25 cost sharing arrangement with the municipality would not be reduced by the amount of any development charge where such charge is limited to 12.5%.

5. The Urban Transportation Grant Program should be reviewed to ascertain the feasibility of a supplementary fund to assist Towns
   (a) whose populations approach 10,000 (e.g. over 7,500), so as to graduate the grant ceiling from that applicable to Towns to that applicable to Cities; and
   (b) of any size, that can demonstrate an exceptional rate of growth, and in such cases the basis for such assistance to be the special needs of that Town rather than its population growth.

6. Where a municipality is not prepared to fund construction of the permanent arterial road, or part thereof, the developer

should be permitted to build a temporary road to meet his requirements, but this should not relieve him of the obligation to pay his apportioned share of the permanent arterial road.

7. Since all other roads primarily serve neighbourhoods they should be equitably considered the responsibility of the development industry and a cost to be borne by new development areas.

8. The cost of physical works and land requirements that are necessary for noise attenuation are considered to be an integral part of road construction and design and the cost should be allocated in accordance with the recommendations made above on the allocation of road costs.

Recreation

9. Development levies and charges for the provision of recreational facilities (buildings, equipment, irrigation etcetera) should be eliminated because such facilities are not an essential pre-requisite to making new homes available.

10. The development industry should continue to be required to grade and loam municipal and school reserves. A requirement for seeding is also considered desirable, but to ensure that standards are reasonable, developers should have the option of paying the cost of seeding to an agreed standard on a per hectare basis. There may also be circumstances where by mutual agreement reserves can be left in their natural or otherwise acceptable state. Ongoing operation and maintenance costs should not be borne by the developers except by initial voluntary agreement with the municipality.

Administration and Inspection

11. When full consulting services are provided by a developer's consultant, a certain minimum level of municipal inspection is necessary to ensure the consultant fulfills his responsibilities.

    If more detailed inspections are desired by municipalities then the municipalities should be prepared to assume the full cost of the additional inspections.

12. The attempt to frame a model engineering agreement by the City of Calgary and the Urban Development Institute setting out the responsibilities of the developer's consulting engineer, the developer and the municipality is commended, and if successful, it is recommended that its findings be circulated to the industry, the Alberta Urban Municipalities Association and Alberta Association of Municipal Districts & Counties.

13. Where the developer's consulting engineer is responsible for ensuring the work is undertaken to the satisfaction of the municipality, municipal inspection costs should be limited to those required to ensure that the consultant meets this obligation. If on the other hand the engineer is not resident and is not providing full inspection, greater inspection must be provided by the municipality and the costs thereof are appropriate for recovery.

14. Note has been taken of application and processing fees. The Committee does not feel that these fees are appropriate for development agreements. However, to the extent that they are collectible through the provisions of a land use by-law, it is recognized that they are outside the terms-of-reference of the Committee.

Operating and Maintenance Charges

15. The development industry should not be required to provide for operation and maintenance of any improvement after issuance of the final certificate of acceptance. The issuance of a final certificate of acceptance should not be unreasonably withheld.

16. The municipality should not be responsible for the ongoing operating and maintenance costs of amenities built by the developer and not required by the municipality.

Survey Control Monuments

17. The costs of installing new survey control monuments should not be passed on to the developers, since no direct benefits to the developers can be demonstrated. The benefits are community wide.

Traffic Signals and Street Lighting

18. Energy charges for street lighting should be a municipal responsibility. The municipality should decide at what point in time development warrants energizing the street lights.

19. A distinction was identified between residential developments and other types of development with regard to traffic signals. It was concluded that such costs are equitably allocated to the developer for non-residential developments where such development necessitates the installation.

20. The costs of traffic signals in residential areas should be allocated in accordance with the recommended allocation of costs for various categories of road.

Campus Acquisition Fees

21. It was concluded that while there may be some need for additional school lands, campus acquisition fees have the effect of circumventing the provisions of The Planning Act. It is recommended that the levies should be eliminated.

Legislation

22. The Committee is of the view that the appropriate use of land should not be confused with the conditions under which land is to be subdivided and developed. The execution of any contract or development agreement dealing with the construction or payment for facilities or services as a prerequisite or condition of land use reclassification is inappropriate and should be prohibited, except in the case of specific sites in Direct Control Districts.

23. The 30 day limit on an appeal by an applicant to a condition of subdivision relating to a development agreement should be removed because negotiations regarding such agreements are often extended long after the expiration of the 30 day period. An appeal in respect of such a condition should be allowed to an applicant as long as the subdivision approval remains valid.

24. The ambiguity surrounding the specific meaning of "access to" in relation to roads serving a development or a subdivision should be removed and the cost sharing of roads should be guided by the recommendations contained herein.

25. Clarification of the apparent conflicts in the interpretation of the current legislation is necessary to the extent needed to ensure these recommendations and those on implementation can have effect.

Implementation

26. Code of Practice - It is proposed that the constraints now contained in The Planning Act related to lot levies and development charges be removed from the Act and that a "Code of Practice" be adopted.

    The Code of Practice should contain those statutory provisions that it is possible to remove from current legislation, suitably modified by the recommendations of this report. It should set out the general principles and guidelines as well as specific limitations to the extent necessary, similar in some respects to the specific and general provisions of the Subdivision Regulation.

27. Adoption of Code - The Committee prefers, and recommends, that the Planning Act provide for a Code of Practice to be adopted by means of an Order in Council.

28. Accountability - The Code of Practice should include some measures additional to the existing legislative provisions to improve accountability. A municipality should be required to identify the specific works for which charges are levied; developers and landowners who are affected should have an opportunity to appear before council before bylaws are passed or levies imposed; once funds are received they should be earmarked with accumulated interest for the purpose specified.

29. Special Board - A special board is recommended to hear and determine any disputes. The board would be guided by the Code of Practice but should be empowered to waive the provisions of the Code where it is deemed fair and reasonable to do so. The Board would also advise the Minister--of Municipal Affairs--from time to time on amendments to the Code.

30. Appointments - The proposed Board should be composed of representatives from the industry and municipal associations. The appointed members could appoint a Chairman or, failing agreement, a Chairman could be appointed by the Minister.

31. Board Administration - The Secretary of the Special Board and the administrative services could initially be provided under the auspices of the Alberta Planning Board.

I. THE COMMITTEE AND ITS TERMS OF REFERENCE

The Nichols Report

At the request of the Minister of Municipal Affairs, the Department of Municipal Affairs retained the firm of Nichols Applied Management to examine problems relating to the imposition of development levies and charges. This request arose out of representations from the development industry that unauthorized and inequitable charges were being levied by certain municipalities resulting in unwarranted increases in the cost of new homes. At the same time some municipalities were seeking clarification and a broadening of their powers to impose levies and charges that they considered justified in connection with new development.

The report was delivered in March 1984 and up-dated with revisions to November 1984. The executive summary is attached as Appendix V of this report.

The Advisory Committee

After examining the report, the Minister found that there were "no easy solutions and that there are many aspects on which the advice of all those affected should be sought". With this objective the Minister requested the development industry (Urban Development Institute and the Home Builders' Association) to nominate four representatives and the municipal associations (Alberta Urban Municipalities Association and Alberta Association of Municipal Districts & Counties) to nominate an equal number to an advisory committee which would review the Nichols report and related problems and prepare recommendations for his consideration.

An independent chairman was appointed by the Minister. Representatives from the Departments of Municipal Affairs, Housing, and Utilities and Telecommunications were invited to participate in an advisory and assistance role.

The administrative and research resources of the Research & Development Branch, Planning Services Division of the Department of Municipal Affairs, under the direction of Dr. Graham Power, together with the expertise and research capacity of Mr. Peter Nichols, were made available to the Committee.

A list of the members is attached as Appendix I of this report.

The Terms of Reference

The following terms of reference for the Advisory Committee were prescribed by the Minister.

"1. Review the report titled "Review and Evaluation of Development Levies and Charges" prepared for Alberta Municipal Affairs by Nichols Applied Management (1984) as a background information paper.

2. Endeavour to develop policies, procedures and, if necessary, legislative changes to resolve the problems and conflicts set out in the Nichols report to the mutual satisfaction of municipalities and the industry.

3. Advise the Minister of Municipal Affairs and participating organizations as to the findings of the Committee on or before the 31st December, 1985."*

In addition, the Minister asked that "particular attention should be paid to solutions not involving recommendations for major legislative change, although such recommendations will certainly be considered if they emerge from the deliberations of the Committee."

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* *By letter dated 8th January, 1986, the Minister extended the completion date to 31st March, 1986.*

II. CLARIFICATION OF PHILOSOPHIES AND ISSUES

As a starting point the Committee requested the development industry and the municipalities to summarize their philosophies and points of view regarding the allocation of development costs. Submissions received by the Committee are listed in Appendix II. General discussion of these submissions indicated a significant divergence in the approach of the parties to the matters requiring resolution. Briefly, their positions can be summarized as follows -

The Municipal Position

1. Municipalities must have the ability to charge development with the costs associated with bringing new development on stream including both the costs of on-site infrastructure and off-site extensions required to accommodate the proposed development.

2. In times of rapid growth the upgrading and maintenance of the existing infrastructure places heavy demands on municipal resources and necessitates levies and charges that will ensure that capital expenditures related to new development are borne by such development and are not a burden on the existing community.

3. Where the existing community, through its elected representatives, decides to stimulate growth by meeting some of the capital costs related to new development, the degree and form of such assistance is best decided at the local level.

4. When the powers of municipalities to impose development charges and levies are restricted, it becomes more difficult for them to finance the expenditures needed to accommodate growth. As a

result it becomes more difficult for new development proposals to obtain land use reclassification, subdivision approvals and development permits.

5. A number of municipalities take the position that Sections 76, 77 and 92 of the Planning Act do not limit the powers of a municipality to enter into a contract with a developer, and that the Municipal Government Act and Interpretations Act provide broad powers to municipalities in respect of the content of agreements.

The Position of the Development Industry

1. The specific provisions of Sections 76 and 77 of the Planning Act limit the general powers of municipalities to impose off-site levies and development charges. A number of such levies and charges now being imposed by municipalities do not come within these limits and are therefore illegal.

2. The principle that all capital costs related to new development should be met by such development, and indirectly by new home purchasers, is not equitable or justified because -

   (a) new development shares the responsibility for repaying the existing debt of the community, thereby reducing the obligations of existing taxpayers for all its historical debt.

   (b) new development and growth expands the municipal tax base and municipal revenues in perpetuity.

   (c) new development will have to share in the cost of maintaining and replacing much of the old infrastructure

in the existing community, thereby relieving existing taxpayers of a portion of their burden.

3. Utilities such as sewer, water and power and their extensions should be financed in a similar manner to natural gas and telephones which under normal urban circumstances recover all costs through user charges.

4. However, realistically, the development industry accepts responsibility for on-site local (neighbourhood) infrastructure that can be demonstrated as being necessary for the development; other than shallow utilities such as cable television, telephones, power and gas should be financed through user charges.

5. Levies and charges (and other requirements of a development agreement) should be based on standards equivalent to those which the municipality itself would apply for that particular improvement.

6. The development industry agrees with the concept of negotiation; the wrongful withholding of statutory approvals should not be employed as a bargaining strategy.

III. GENERAL FINDINGS

Committee Methodology - Issue Identification

The Committee identified seven major issues in dispute and agreed to examine them in some depth with a view to reaching a consensus on equitable solutions. These issues are listed below -

1. Off-site levies.
2. Oversize charges and financing.
3. Arterial roads.
4. Recreation facilities and park development.
5. Administration and inspection.
6. Miscellaneous.
7. Legislation, interpretation and conflicts.

The Committee found it convenient to deal with Issues 1 & 2 together; treatment of all the issues is found in Section IV.

It was recognized that to reach a consensus would mean a departure of both parties from their initial positions. In the first place an effort was made to reach agreement on an equitable allocation of costs and, where necessary, to negotiate a compromise acceptable to both parties. Secondly the Committee examined alternative mechanisms for implementing the recommended policies with a minimum of regulation.

The Committee agreed that it would not endeavour to establish uniform practices or formulae but rather general principles and policies and specific recommendations only in respect of certain items in dispute.

The Committee examined each of the major issue areas in some depth.

In addition to the report of Nichols Applied Management, which was used as background information, the Committee received briefs (listed in Appendix III) and directed staff to collect information on each issue. The staff was also directed to provide an evaluation of the financial impact of the various levies and development charges on the municipalities and on the homeowner. During the course of its work a number of general findings emerged that served to confirm many of the representations leading to the formation of the Committee and greatly enlarged upon the information previously available on lot levies and development charges.

Equitability

1. A number of problems were placed on the table by the participating organizations. The problem areas contained many specific concerns that require detailed technical exploration for a full understanding. Because the effect of imposing lot levies and development charges is to move certain costs from the existing taxpayer to the new homeowner, the question of equitability is foremost in many of the issues.

2. Equitability is perceived as a question of the extent to which beneficiaries can be identified and the extent to which the charges employed fairly allocate costs among those identifiable beneficiaries. In many instances examined by the Committee the beneficiaries of physical works for which charges are levied could be identified. In other cases, such as major or arterial roads, the existing residents and the citizens at large both derive benefit and the allocation of costs is a matter of compromise.

3. The Committee has found that in most instances there are grounds for compromise and resolution of differences, at least

in principle. There has been general agreement on the need for negotiation rather than more restrictive legislation to deal with problems. There is a need in the more difficult problem areas to provide a mechanism for arbitration or appeal which will deal with specific disputes rapidly on the basis of general principles of reasonableness and fairness.

4. The recommendations of the Committee therefore deal in principle with many of the problems raised for its consideration. It is the Committee's opinion that the technical details are often specific to each particular case and are best dealt with according to the particular circumstances.

Nature of Lot Levies and Development Charges

1. The practice of applying lot levies and development charges is found throughout the municipalities of Alberta. It is not possible to determine whether the majority of cities, towns, municipal districts and counties employ such charges, but it is likely that only a minority of municipalities other than cities employ them.

2. Not all municipalities levy charges for the same services. The larger municipalities have the greatest range of charges and have developed the most complicated formulae for the allocation and collection of charges. This may reflect the complexity and range of the services they feel obligated to provide for their citizens.

3. Many municipalities require developers to front-end or construct services as a condition of the development agreement. Each developer is then reimbursed for oversizing by

the municipality or by later developers. The effect of this practice is the equivalent of a lot levy or development charge, except that the developer is required to build services and facilities, accommodate future development and provide the necessary financing. The financial involvement of a municipality in the provision of services for new areas is minimized by this practice.

4. The most frequently found method of allocating costs as a basis for calculating development charges is to total costs and average them across a development area, prorating in accordance with the capacity required by each development or by acreage. Some municipalities, however, average only the incremental costs of oversizing and prorate the average of the incremental costs by capacity or acreage. For recreation, administrative and other similar charges, actual costs are simply averaged among new developments or passed on to a single development. Road costs are allocated in a variety of ways, some of which become complex in the larger cities.

Impact of Charges

1. The Committee has found it very difficult to measure the importance to municipalities of lot levies and development charges in terms of municipal revenues, or the tax base. It has been somewhat easier to measure the impact of charges on a per lot or per hectare basis and ultimately to the new homeowner. Legislative provisions require municipalities to set out the object of off-site charges and how the levy is determined. However many of the other development charges collected through development agreements are not separately identifiable in municipal accounts. As a result, the impact of charges relative to municipal revenues and the tax base are difficult to measure.

2. The Committee has received a number of representations on the importance of levies, charges and contributions in kind and has conducted its own sample survey upon which to base the analysis found in Section V. It is clear, though, that a great deal more detailed work would be necessary before a complete appreciation of the impact of lot levies and development charges can be obtained.

3. The financial arrangements for funding the provisions of services for future development appear to play a very important role in determining the impact of development charges on the new homeowner. The source of financing - whether public or private, what share of total costs are front-ended and how carrying costs and interest charges are recovered over the long term from later developments, are all vitally important in establishing the level of charges and ultimately the cost to the new homeowners.

Market Influence

1. The impact of charges has been observed to work differently depending on the state of the economy. In times of rapid growth and rising prices the municipal requirements for financing to accommodate growth are very large. In periods of slow growth, financing requirements are less but the ability of municipalities to obtain funds is correspondingly reduced. In periods of rapid growth it is possible to pass on lot levies and development charges to the new homeowner but in times of slow growth, however, home purchasers are more sensitive to lot prices in general and to development charges. Development costs have been moving from the general tax base to new homeowners in times of rapid growth and in times of slow growth there is pressure to stop or reverse this trend.

2. Some concerns have been expressed as to whether any reductions in development charges or lot levies will reflect in the price of homes to the consumer. The Committee concurred with the view that in a competitive market such reductions will benefit the home purchaser. Similarly, municipalities that wish growth to occur in their community will take steps to ensure that levies and charges are not an impediment to such growth, without the need for legislative action. This is already very evident.

3. The Committee is of the view that whatever implementation mechanisms are employed it is very important to preserve the elements of negotiation and the influence of market conditions on the level and number of charges.

4. The Committee has been made aware of the fact that difficult economic conditions will result in leaner operations by municipalities and the development industry. This tends to lower development costs rather than transfer them. This works to the benefit of all concerned.

IV. ISSUES

Issues No. 1 & 2 - Utility Oversizing and Off-site Charges

Present Practice

The authority for municipalities to charge utility off-site or oversize levies currently exists in The Planning Act, so that the question of the authority to charge has not emerged as an issue. In 1984, amendments were made to the Planning Act to clarify the authority to charge for oversizing, to allow oversizing charges to be passed on to later developments and to make allowance for accumulated interest charges. Concern has been expressed, however, about accountability for charges; their method of calculation; the services and facilities included for purposes of calculation and the risks borne as a result of installing initial capacity for future prospective, but uncertain, development. Such capacity is installed initially in order to capture economies of scale to be derived from the sharing of pipes and facilities and to minimize the disturbance to existing development areas as a result of expansion of services to new areas.

Charges for the provision of storm sewers, sanitary sewers and water supply are extensively used throughout the Province. Municipalities have found it convenient for the purpose of calculating levies to separate off-site charges from oversizing. Off-site charges are made for facilities that are located away from a particular development site but are necessary for the proposed development to take place. Oversizing is the practice of installing utilities in a particular development that are in excess of the requirements needed for that development. Such oversize may include both the size of the pipe and its depth. This oversize capacity is required for anticipated future developments located adjacent to and beyond the

current one. The on site services required for the development itself are normally installed at the cost of the developer and are commonly passed on to the new homeowners.

The Committee has examined current practices at considerable length and dealt with oversizing and off-sites together because common principles were found to apply to the equitable allocation of charges, the methods of calculating such charges and financing. In the larger municipalities the methods of calculation are often complex and take into account such things as the area or catchment basin to be serviced, the specific trunk or oversize facilities to be installed, borrowing costs, interest and carrying charges and other factors. This results in many different assessments and calculations depending on the location and extent of new development and available existing capacity. The picture is further complicated by the fact that in some municipalities, the development industry front-ends the installation of oversize and off-site capacity and receives reimbursement, with interest where applicable, from other developments when they occur for the capacity installed. In such cases the municipality acts as an intermediary collecting and distributing the recoveries.

The most common method of allocating costs involves dividing the cost of a common facility by the acreage it is designed to serve, thereby arriving at a common cost per acre. The first acre to be developed and the last acre to be developed pay the same amount except for the appropriate carrying charge. This is referred to as the 'averaging' system.

An alternate method is for every acre developed at any point in time to share equally in the cost of a facility sized only to serve the developed acres, and for another party (preferably the municipality but sometimes the initial developer) to finance the marginal or

incremental cost of extra capacity to look after future development needs. As development occurs, all developers benefit from economies of scale and the municipal investment is always limited to the financing of unused capacity. This is referred to as the 'marginal' or 'incremental' system.

Where developers front-end the costs, they must await additional development for recovery of capital with interest. Similarly where the municipality front-ends development it bears the risks. It is very important therefore to determine a design capacity with an awareness of the risk involved. Where the developer finances the cost there is no economic constraint on municipal designs. Problems have arisen, particularly in recent years when development has slowed or stopped, because interest and carrying charges have been building on unused capacity; in some cases outstanding interest has exceeded the original capital assessments and more than off-set the anticipated economies of scale.

Other difficulties have resulted from the methods of cost allocation. The employment of averaging has given the initial developers the benefit of economies of scale which may never be realized and has limited the payout of capital in early years. This has resulted in larger accumulations of outstanding capital and interest than if the incremental approach had been used.

The Committee has therefore attempted to define certain principles that have emerged from its review as basic to the equitable allocation of costs and the efficient financing of off-site and oversize capacity. It is not the mandate of the Committee to provide direction on the specifics of financing, particularly in the light of the existing well-developed systems of cost allocation and financing that are already established. However the Committee wishes to offer a proposal based on the incremental approach that it

feels has merit in terms of equitable allocation and efficient financing. These principles are outlined below and examples of its application are provided in Appendix IV.

Principles

A. Financing of Trunks and Oversize Utilities

Principle 1

Front-ending

It is equitable that municipalities 'front-end' or finance the incremental or marginal cost of providing capacity in excess of current requirements whether such excess capacity is required in off-site trunks or on-site services.

Comments

A municipality determines the area which must be serviced by a trunk main or oversize pipe through a subdivision, based on engineering criteria and cost/benefit considerations.

No equitable grounds were found for a municipality to require a developer to front-end trunk or oversize capacity for future developers.

Notwithstanding the preceding paragraph, where for financing reasons a municipality does require a developer to front-end a trunk or oversize to provide capacity for future development, this requirement should be limited to anticipated development within a 10 year time frame.

No equitable grounds were found for a municipality to finance at any point in time more than the incremental or marginal cost of capacity for future development.

Principle 2

Economies of Scale It is equitable for a developer to benefit from the economies of scale only as such benefits are realized.

Comment

When the total estimated cost of a trunk or oversize is 'averaged' over the area to be served, the initial developers benefit from the expectation of economies of scale. These may never be realized and later developers can be faced with paying excessive carrying charges. Thus the risks of front-ending for future needs are aggravated by this method of cost allocation.

Principle 3

Trunks

It is equitable that at any point in time all development, up to and including current development, served by a particular trunk, should share proportionately (e.g. per hectare) in the cost of a trunk sized to meet the needs of such development and that each development pay the carrying costs of its share according to the time of that development.

Comment

The contribution of each new development under this formula will be adequate firstly to ensure that the municipal investment would be reduced to that incremental or marginal cost required to

accommodate future growth (e.g. unused capacity) and secondly to rebate to earlier developers an amount corresponding to the economies of scale resulting from the new development.

Principle 4

Oversize

It is equitable that each new development pay the incremental or marginal cost (including carrying costs) of any portion of oversize that was necessitated in earlier subdivisions to accommodate that development.

Comment

This ensures that at any point in time the investment of the municipality is limited to the incremental or marginal cost of oversize required to accommodate future growth (i.e. unused capacity).

Principle 5

On-site service

It is equitable for a municipality to require a developer to construct or pay the cost of on-site services to meet the needs of the lands he is developing.

Comment

It is reasonable for a municipality to establish certain minimum sizes for the purpose of calculating the incremental or marginal costs of oversize, that is for the extra capacity required to serve future development.

Principle 6

Limits on charges

Where a developer can demonstrate that his share of the cost of a trunk and oversize including

carrying charges is greater than the current cost of an independent line to or from the same source, then the developer should pay only that 'stand alone' cost.

Similarly if a developer can demonstrate that his land can be serviced at a lower cost from an alternative source, without encroaching on capacity designed and required for other lands, then his contribution should be limited to the estimated cost of such alternative.

Comments

Where such a reduced contribution is made this should first be applied to reducing the investment of the municipality to the incremental cost of providing capacity for future development and secondly, the balance apportioned to earlier developers being the benefit of economies of scale.

If no balance is available for distribution to the developers, it indicates that on a cost/benefit basis no further benefit can be derived from economies of scale as the carrying charges have now equalled or exceeded such benefit.

It is considered that the lower cost alternative would seldom be applicable because

(i) only marginal or incremental costs (and not average costs) would be subject to carrying charges and

(ii) capacity designed and required to serve other lands would be an excluded option.

Principle 7

Government grants and subsidies

In any calculation where there is a division of costs, senior government grants should be prorated to participating system users. Any benefits derived from municipal financing related to interest rates or interest subsidies should be allocated similarly.

B. Financing Water Supply, Treatment and Storage Facilities, Sewage Treatment and Disposal Facilities

Principle 1

These facilities should ideally be financed through user rates.

Comments

This is the practice of larger centres such as Calgary and Edmonton, and of Regional Services.

User rates will reflect full costs of service, encourage utility systems to provide for replacement and expansion, and will encourage a better use of resources by the ultimate user.

Principle 2

Where it is not equitable or practical to finance these facilities through user rates and new development is required to bear the cost, it should receive a credit for -

(1) government grants

(2) benefits to the existing system (e.g. better fire protection etc.)

(3) any outstanding debt in respect of the existing facilities which the new homeowners will share.

Comments

The allocation of such costs to new development can only be justified where it is anticipated that within a relatively short period of time the new development will represent a significant part of the entire community.

Where the municipality front-ends the cost of such facilities the initial developer should, in so far as it is practical, pay the equivalent cost of the minimum facility to serve his needs. The municipality should only carry the marginal or incremental costs required to serve future development.

Each subsequent developer would pay his share of the facilities necessary to serve all development up to and including his development in a similar manner to that proposed for financing utility trunks. The municipality would only carry the incremental cost, with carrying charges, to accommodate future growth.

New development should not be expected to share in the repayment of debt for existing facilities as well as pay the full cost of facilities to meet its needs.

Municipal funding should preferably be financed

by the utility through user charges and recoveries credited to users.

The alternative of allocating all or part of municipal expenditures on such facilities to the general tax base is always available but not recommended as it distorts the charges that citizens pay for utilities and for general government.

Issue No. 3 - Roads, Arterials & Collectors

Present Practice

The practice by municipalities of levying development charges for the provision of arterial, major and collector roads appears to be extensive. Although such roads are normally off-site and are not included under Section 76 of the Planning Act, it is argued that these roads are required "to give access" to new development or subdivision and are therefore a legitimate subject for charges under Section 77(1)(a) and 92(1)(b)(i) of the Act.

Rapidly growing municipalities face heavy expenditures for arterial and major roads providing access to developments and neighbourhoods. The arterial grid, as it is sometimes referred to is a cost burden that may be shared in part from the municipal tax base and in part from development charges and provincial grants. It is a generally accepted practice that service (frontage) roads within a development are constructed at the expense of the developer.

Under present policy, the provincial basic capital grant for arterial and major roads consists of 75% of the capital costs of eligible projects after deduction of "costs borne by others such as developers, railway companies, private organizations and other government agencies." Thus developer levies and charges are contributions that are expected to be deducted from project costs before the 75% provincial and 25% municipal cost shares are calculated.

It is known that in periods of rapid development the provincial funding ceilings are reached before all necessary arterials and collectors can be included under the formula, thereby leaving the

cost of constructing some arterials to be borne solely by the municipality and by development levies. In slower growth periods, however, the cost-sharing formula may be adequate to cover all the necessary arterial roads.

However, in the metropolitan cities of Edmonton and Calgary a substantial portion of the capital grant is being applied to L.R.T., buses, crown surfacing or other categories of transportation leaving little or no provincial funds for new arterial roads even in slow growth periods.

Municipal practices with respect to charges are varied, although the formulae applied to determine development levies result in a somewhat similar cost sharing. One approach is to charge an acreage levy based on a "watershed" area or the whole of the community. Another approach, is to require a contribution based on a formula relating to abutting or adjacent arterials. The picture is further complicated by the introduction of the concept of 'access' as a basis for charges. Section 77(1)(a) of the Planning Act permits, as a condition of issuing a development permit, a requirement that the applicant agree to construct or pay for the construction of "a public roadway required to give access to the development". Other charges that appear to be applied in some municipalities are based on the general cost of providing or upgrading road service throughout the municipality and are sometimes referred to as 'downstream' charges. A further charge, or levy, or contribution towards the cost of noise attenuation is applied in some large cities.

The position of the development industry is that off-site charges for arterials or any external road are absolutely inappropriate and illegal. The municipalities take the view that the developments that create the need should accordingly pay the costs of supplying

the services and that these roads are required to provide access.

Findings of the Committee

The Committee reviewed in considerable detail the application of charges in Edmonton, Calgary, Red Deer, St. Albert, Spruce Grove, and the County of Strathcona. It also reviewed the information contained in the Nichols report and charges in a number of other municipalities and some urbanized counties and M.D.s adjacent to major urban centres.

The Committee found that there is a distinction to be drawn between those roads required to provide service within subdivisions and neighbourhoods, and major collectors and arterials with no direct lot access.

On the matter of equitability two viewpoints were identified. The first is that new developments should bear the costs of major and arterial roads, after deducting any Provincial grants since this traffic is responsible for creating the need. The second view is that the community as a whole is the beneficiary of arterial roads and therefore the general tax base is an equitable source for the funding. A long term shift has been observed from the municipal tax base to the new home buyer which gives rise to concern in relation to the affordability of housing. Provincial grants have been inadequate to meet all the needs for this category of roads in some municipalities.

Majors and arterials are usually constructed on an approximate one mile grid and are of benefit in part to these new neighbourhoods by providing access directly or indirectly to new developments. They also provide an important linkage in the transportation pattern of the municipality as a whole. These roads are eligible for the

provincial basic capital grant of 75% of the net cost after deducting all other contributions; however the maximum available grants are sometimes allocated by municipalities to L.R.T. and other transportation needs and therefore are unavailable to offset the specific costs of arterial roads.

On a per capita basis the grant ceiling applicable to Towns is about 25% of that applicable to Cities. The requirements of Towns for facilities such as L.R.T., buses and grade separations are substantially less, but the grant ceiling creates special difficulties in two circumstances.

(a) Where the Town population approaches 10,000 its needs approximate those of a small City and the much lower grant ceiling necessitates seeking maximum assistance from developers, and

(b) Where a Town experiences an exceptional rate of growth, which may exceed the rate of growth experienced by Cities, the grant ceiling based on population necessitates seeking maximum assistance from developers.

The Committee also reviewed the question of noise attenuation. It was found that the matter is very contentious and that land requirements for noise attenuation can be very costly. Figures were obtained that showed that, where noise attenuation contributions are required in the form of land or cash, costs average as high as $220 per lot for land and $95 per lot for construction, not including fencing or landscaping.

In principle it was agreed that where noise attenuation measures are necessary, they should be considered part of road design and costs should be allocated to beneficiaries as recommended for the roads themselves.

Conclusions & Recommendations

1. It is recommended that continuous transportation corridors, and expressways and freeways which are usually constructed in the major cities on an approximate three mile grid, are of primary benefit to the municipality as a whole and to all Albertans and should be financed by provincial funding and the general revenues of the municipality and should not be the subject of development charges or lot levies.

2. It is recommended that the contributions by the development industry to major roads and arterials, should not exceed 12.5% of the total cost. This is based on the propositions that the road is eligible for 75% financing from the Alberta Transportation Basic Capital Grant leaving a balance of 12.5% for the municipality, and that the Alberta Transportation Policy is amended as recommended below.

   Developers' contributions should not be increased where a municipality chooses to apply its transportation grant to other eligible items or has reached the grant ceiling.

   However, it is recommended that the Alberta Transportation Policy be amended so that the 75:25 cost sharing arrangement with the municipality would not be reduced by the amount of any development charge where such charge is limited to 12.5%.

   Where a municipality is not prepared to fund construction of the permanent road, or part thereof, the developer should be permitted to build a temporary road to meet his requirements, but this should not relieve him of the obligation to pay his apportioned share of the permanent arterial road.

3. It is recommended that since all other roads primarily serve neighbourhoods they should equitably be considered a responsibility of the development industry and a cost to be borne by new development areas.

4. The cost of physical works and land requirements that are necessary for noise attenuation are considered to be an integral part of road construction and design and should be allocated in accordance with the recommendations made above on the allocation of road costs.

5. It is recommended that the Urban Transportation Program be reviewed to ascertain the feasibility of a supplementary fund to assist Towns -

   (a) whose populations approach 10,000 (e.g. over 7,500) so as to graduate the grant ceiling from that applicable to Towns to that applicable to Cities, and

   (b) of any size, that can demonstrate an exceptional rate of growth, and in such cases the special needs of that Town rather than its population growth to be the basis of assistance.

   These adjustments should reduce the pressure on Towns to levy from developers more than 12.5% of the cost of major roads and arterials.

Issue No. 4 - Recreation Facilities and Park Development

Present Practice

A number of municipalities levy charges towards the cost of recreation facilities through development agreements. These include buildings, equipment, furniture and the installation of irrigation facilities. Nichols has found that charges for this purpose range from 0 to 60% of the total off-site levies paid by developers. Local area facilities within subdivisions (on-site), such as tot-lots and playgrounds, baseball diamonds and tennis courts are usually required to be provided by the developers under the terms of the development agreement. Larger recreational facilities are the subject of development charges.

The Planning Act does not specify that a municipality can levy charges for recreation facilities. The Act does provide for land to be taken as municipal and school reserve. Current practice varies substantially from municipality to municipality. Calgary, for example, does not require a contribution except in certain designated areas where the cost of already-built facilities is being recovered; no new areas are being brought under the levy. Edmonton does not charge for recreation facilities. Several municipalities have dropped recreation charges in recent years and only five of thirteen municipalities responding to an Alberta Urban Municipalities Association questionnaire showed recreation charges. However, many municipalities still have requirements for landscaping of neighbourhood municipal and school reserves.

The development industry takes the position that levies to pay for recreational and community facilities are not appropriate. They also take the view that the industry should not be expected to

dedicate land for reserves in excess of that provided for by the Planning Act. Municipalities take the position that basic needs should be met by the development that creates the need.

Findings of the Committee

The Committee reached a consensus that the provision of recreational facilities such as buildings, tot-lot and playground equipment, tennis courts and irrigation, although desirable, should not be regarded as an essential service for a new residential development. It was also recognized that conditions in small towns and communities are different from large centres; the whole town is in effect a neighbourhood and the provision of recreation facilities can be provided for equitably through general revenues. The Committee therefore concluded that development charges and levies for recreational facilities are not appropriate and not supported by the present legislative provisions.

The matter of surface improvements to local municipal and school reserves was also examined. Many development agreements call for grading, loaming and seeding. It was the Committee's opinion that a requirement for developers to grade and loam municipal and school reserves within subdivisions is both realistic and practical. Seeding is a more difficult matter to determine, primarily because although the requirement in itself is reasonable, the application of stringent standards by municipalities can lead to unfair practices. The Committee felt therefore that some protection should be provided to the developer against unreasonably stringent conditions.

Conclusions and Recommendations

1. It is recommended that development levies and charges for the

provision of recreational facilities should be eliminated because such facilities are not an essential pre-requisite to making new homes available.

2. It is recommended that the development industry should continue to be required to grade and loam municipal and school reserves. A requirement for seeding is also considered desirable, but to ensure that standards are reasonable developers should have the option of paying the cost of seeding to a reasonable standard. There may also be circumstances where by mutual agreement reserves can be left in their natural or otherwise acceptable state. Ongoing operation and maintenance costs should not be borne by the developers except by initial voluntary agreement with the municipality.

Issue No. 5 - Administration and Inspection

Present Practice

A number of different charges and levies were found to be associated with administrative costs. They include, general administrative charges, legal costs, plan examination and inspection fees as well as charges for by-law and subdivision processing and processing of development agreements.

It appears that there is a requirement by some municipalities that developers pay for the costs associated with applications, plan review and inspection. Up to 15% of the total of off-site levies charged is related to administration and inspection. Other information received by the Committee shows that such charges are levied by only a minority of municipalities and that the amounts charged vary greatly.

Section 69(3)(q) of the Planning Act provides that a land use by-law may be used to establish the fees and procedural matters considered necessary by a council. The Subdivision Regulation provides for approving authorities to charge an application fee.

Findings of the Committee

The Committee found that inspection costs can become a substantial item, particularly in the larger municipalities, where detailed engineering drawings must be checked and full-time inspectors approve work undertaken under the direction of the engineering consultants of the developer. There is a need to protect the interests of the municipality. The development and consulting

industry are approaching agreement with the City of Calgary on a standard engineering contract under which the developer's consulting engineer will take responsibility for completion of work to municipal specifications.

This may add to the direct costs of the developer but should reduce the charge levied by the municipality.

In small centres and rural areas the developer usually is responsible for performing work to the standard established by the municipal consultant and the developer pays to the municipality the cost of the work performed by the municipal consultant.

Conclusions & Recommendations

1. It was agreed that the key to minimizing inspection costs and avoiding duplication is to ensure that very clear and specific responsibilities are identified for both the engineering consultant and the municipality. It was also recognized that circumstances in the larger cities appear to be different from those in smaller centres where full resident engineering supervision is not always readily available.

2. It was agreed that with full consulting services provided by a developer's consultant, a certain minimum level of municipal inspection is necessary to ensure the consultant fulfills his responsibilities. If more detailed inspections are desired by municipalities then the municipalities should be prepared to assume the full cost of the additional inspections.

3. It was recommended that the attempt to frame a model engineering agreement by the City of Calgary and the Urban

Development Institute setting out the responsibilities of the developer's consulting engineer, the developer and the municipality should be commended, and if successful, its findings circulated to the industry, Alberta Urban Municipalities Association and Alberta Association of Municipal Districts & Counties.

4. It was agreed that where the developer's consulting engineer is responsible for ensuring the work is undertaken to the satisfaction of the municipality, municipal inspection costs should be limited to those required to ensure that the consultant meets these obligations. If on the other hand the engineer is not resident and is not providing full inspection, greater inspection must be provided by the municipality and the costs thereof are appropriate for recovery.

5. It was agreed that note would be taken of application and processing fees. The Committee does not consider that these fees are appropriate for development agreements. However, to the extent that they are collectible through the provisions of the land use by-law, it is recognized that they are outside the terms of reference of the Committee.

Issue No. 6 - Miscellaneous Charges

Present Practice

A number of other charges and levies were brought to the attention of the Committee, none of which are specifically authorized by legislation. These charges were identified as being for the following purposes: operating and maintenance; survey control monuments; traffic signals and streetlighting; "plus fifteen" walkway connections above street level; and art and other contributions. Some of these charges are currently found to be in effect and others have been used in the past but are not currently being applied. It appears that none of these charges are in wide use.

A. Operating and Maintenance Charges

Findings

Concern has been expressed that developers have sometimes been made responsible for ongoing operating and maintenance costs such as street cleaning, snow clearing and so on for a number of years after project completion; this situation occurs particularly where the subdivision remains only partly occupied due to lack of demand. There have also been cases where developers have provided amenities not required by the municipality and have been responsible for ongoing operation and maintenance.

Conclusions and Recommendations

1. The development industry should not be required to provide for operation and maintenance of any improvement after issuance of the final certificate of acceptance.

   The issuance of a final acceptance certificate should not be unreasonably withheld.

2. The municipality should not be responsible for the ongoing operating and maintenance costs of amenities built by the developer and not required by the municipality unless prior agreement has been reached.

B. Survey Control Monuments

Findings

The purpose of survey control monuments is to control and support a framework for collecting land related information and to generate maps, contour maps and orthographic coverage of the land area of Alberta. In rural areas the monuments may be up to 20 miles apart but in urban municipalities the spacing is required to be as close as 300-500 metres.

Under a cost-sharing programme the Province and an urban municipality can enter into an agreement under which the Province contributes the major cost of establishing survey control monuments. Sixty towns and all the cities except Drumheller have entered into such agreements. Under the agreement the municipality must ensure that additional markers are established in new subdivisions at the required density. The additional markers are

normally established after the services are installed and development is nearing completion. Some municipalities have absorbed these costs as a municipal expense, and some have been passing the cost of work in new subdivisions to the developer.

Conclusions and Recommendations

1. The Committee concluded after an examination of the practice that the primary benefits of survey control monuments accrue to the municipality, the province and map users within the municipalities affected. Little or no direct benefits could be identified as accruing to the developer in respect of the control monuments to be installed within his development.

2. The costs of installing new survey control monuments should not be incorporated into a development agreement and not passed on to the developers, since no direct benefits to the developer can be demonstrated.

C. Traffic Signals and Street Lighting

Findings

Some municipalities require traffic control devices, electronic traffic controls and signalized pedestrian crosswalks to be funded by the developer through the development agreement. It is a generally accepted practice that the capital cost of streetlighting is recovered by the municipality or utility company from the developer.

The Committee reviewed at some length the equitability of the charges passed on from the utility companies to developers and the

standards of development (e.g. underground wiring) required by municipalities, some of which place a substantial cost burden on the developer that is ultimately reflected in the lot price.

Conclusions and Recommendations

1. Energy charges for street lighting should be a municipal responsibility. The municipality should decide at what point in time development warrants energizing the street lights.

2. A distinction was identified between residential developments and other types of development with regard to traffic signals. It was concluded that such costs are equitably allocated to the developer of non-residential developments where such development necessitates the installation.

3. It is recommended that the costs of traffic signals in residential areas should be allocated in accordance with the recommended allocation of costs for roads and arterials.

4. The Committee concluded that a utility charge for the provision of overhead or underground power or streetlighting is an issue of standards and does not fall within the terms of reference of the Committee.

D. Pedestrian Overhead or Underground Walkways

Findings

After reviewing the purpose and intent of these charges or contribution requirements, it was concluded that the requirements

are properly a matter of land use under the land use by-law and not within the terms of reference of the Committee. It is understood these are subject to 'bonus' provisions and contributions are not mandatory.

E. Art Contributions

Findings

After reviewing the purpose and intent of these charges or contribution requirements, it was concluded that the requirements are properly a matter of land use under the land use by-law and not within the terms of reference of the Committee. It is understood these are subject to 'bonus' provisions and contributions are not mandatory.

F. Campus Acquisition Fees

Findings

These levies were introduced by a few municipalities in recent years as a means of providing for the purchase of lands in excess of the maximum dedications provided by legislation for school purposes. The levy does not appear to be widespread.

Conclusions & Recommendations

1. It was concluded that while there may be some need for additional school lands, the charge has the effect of circumventing the provisions of The Planning Act. It is recommended that the levies should be eliminated.

Issue No. 7 - Legislation and Interpretation

A review of submissions to the Minister's Advisory Committee and the report prepared by Nichols Applied Management shows that there are at least two very different positions about the statutory authority for development charges and off-site levies. Unfortunately, the two different understandings lead to very different conclusions about what practices are supported by the statutes.

The two understandings can be described as follows:-

- The Specific Interpretation - The Planning Act provides the statutory right for municipalities to establish certain specific off-site levies and development charges. Only those charges specifically authorized and identified in the statutes can be properly applied to new development and redevelopment.

- The General Interpretation - The Municipal Government Act and the Interpretation Act provide very broad authority for municipalities to enter into contracts with developers. A wide range of development charges can be incorporated in contracts and, provided the documents are legally executed by both parties, the charges can be properly applied.

A. The Specific Interpretation

The Planning Act, Section 76 authorizes a Council to pass a by-law to provide for an off-site levy in respect of land that is to be developed or subdivided, and also authorizes an agreement to be entered into for payment of the levy. The purposes for which levies

may be made are; new or expanded facilities for the storage, transmission, treatment or supplying of water; new or expanded facilities for the treatment, movement or disposal of sanitary sewage; new or expanded storm sewer drainage facilities.

The Planning Act, Section 92 enables the imposition of conditions similar to Section 77 as conditions of subdivision approval.

The Planning Act, Section 77 permits a Council to require, as a condition of issuing a development permit, that the applicant do any or all of the following:- construct or pay for the construction of a public roadway required to give access to the development or a pedestrian walkway system within or connecting to an adjacent development. The applicant may also be required to install or pay for installation of utilities that are necessary to serve the development as defined in any Regulation under Section 1 (z)(v) of The Planning Act, for off-street and other parking, loading and unloading facilities; and to pay an off-site levy or redevelopment levy.

The Planning Act, Sections 97, 98 and 99 permit a subdivision approving authority to require the provision of land for environmental, municipal and school reserve in accordance with the specified dedications set out in these sections. Dedications are not being treated as part of the present terms of reference of the Committee.

The Planning Act, Section 69(3)(q) permits a municipality, in a land use bylaw to provide for the establishment of any agreements, forms, fees and procedural matters the council considers necessary. This Section is used to charge a fee for issuance of a development permit and the costs of processing development agreements.

The Planning Act, Section 145(d) permits the establishment of Subdivision Regulations. These regulations set out the fees that can be charged for applications by a Subdivision Approving Authority. All Subdivision Approving Authorities in the province charge fees for application and processing in accordance with the regulations, except Edmonton and Calgary which are exempt from those provisions and are free to establish charges as they see fit.

The Planning Act, Section 69 may also permit certain things to be required as a condition of the development permit if specified in the Land Use Bylaw.

The Planning Act, Section 146(3) permits the Lieutenant Governor in Council to make regulations governing the maximum amount that a council may establish or impose and collect as a redevelopment levy or an off-site levy.

The Municipal Government Act, Section 181 empowers a city council to lease out air rights over a public highway, road or street.

B. The General Interpretation

The Municipal Government Act, Section 12 establishes a municipality as a corporation.

The Interpretation Act, Section 16 provides that when a corporation is established it may contract and be contracted with by its corporate name.

These provisions are taken together to mean that a municipality can enter into contracts on any matters that are within the purview of the municipality. The general authority regarding the nature of

these matters is referenced in The Municipal Government Act, Section 112 which permits a Council to pass by-laws considered expedient for the peace, order and good government of the municipality.

The Municipal Government Act, Section 47 permits a Council to delegate to its executive committee the power to enter into contracts and execute agreements.

C. Difficulties

The Committee found several concerns with the legislation that have led to problems in the practice of applying lot levies and development charges.

1. Sections 77(1)(a) and 92 permit a Council to require with respect to a development that an applicant enter into an agreement

   "to construct or pay for the construction of a public roadway required to give access to the development".

   Ambiguity exists around the precise meaning of the phrase "access to".
   It can be argued that freeways and arterials give "access to" new developments from the centre or periphery of a municipality.

2. The specific provisions regarding off-site and development levies and charges contained in the Planning Act, notably Sections 76 and 77, do not provide a constraint to the scope of lot levies and development charges if the position is taken that the provisions of the Municipal Government Act and the Interpretation Act provide sufficient basis for municipal

action (i.e. the general interpretation). Sections 76 and 77 of The Planning Act thus become guidelines rather than a framework and do not establish limitations to municipal authority.

3. Several provisions of The Planning Act deal with development agreements. Development agreements can be required as conditions of subdivision approval and as conditions of issuing a development permit. Agreements required as a condition of subdivision approval or the issue of a development permit may deal with such matters as the provision of services, servicing standards and financial arrangements for their installation. It is apparent, however, that land use classification, that is to say the best use of the land in the public interest, should not be dependent on the resolutions of those matters that are the subject of a development agreement.

4. Development permits conditional on the execution of a development agreement can be appealed to a Development Appeal Board, but this is often the Council or a majority of the Council which has specified the terms of the agreement.

5. Section 106(1) of The Planning Act provides for appeals from a condition imposed by a subdivision approving authority provided written notice of appeal is filed within 30 days of receipt of the written decision. Development agreements are often not finalized for many months after the subdivision decision is made and the condition imposed to enter into an agreement is usually a general one. Under these circumstances the specifics of the agreement are not known until long after the appeal period provided in the legislation has expired. The Alberta Planning Board has dealt with appeals against specific provisions of a development agreement after the 30 days have

expired but the legislation remains unclear as to their authority to do so.

6. Land use reclassifications that are conditional on the execution of development agreements have no appeal procedures. It appears that some Councils in the past have used a procedure that requires the execution of an agreement prior to final reading of the by-law providing for land use reclassification.

As a result of the above general and specific legislative difficulties, the Committee has found it impossible to avoid entirely the question of the need for some legislative changes.

Conclusions and Recommendations

1. The Committee is of the view that the appropriate use of land should not be confused with the conditions under which land is to be subdivided and developed. The execution of any contract or development agreement dealing with the construction or payment for facilities or services as a prerequisite or condition of land use reclassification is inappropriate and should be prohibited, except in the case of Direct Control Districts for specific sites.

2. The Committee recommends that the 30 day limit on an appeal by an applicant to a condition of subdivision relating to a development agreement should be removed because negotiations regarding such agreements are often extended long after the expiration of the 30 day period. It is considered that an appeal in respect of such a condition should be allowed to an applicant as long as the subdivision approval remains valid.

3. The ambiguity surrounding the specific meaning of "access to"

in relation to roads serving a development or a subdivision should be removed and the cost sharing of roads should be guided by the recommendations contained herein.

4. Clarification of the apparent conflicts in the interpretations of the current legislation is necessary to the extent needed to ensure these recommendations and those on implementation can have effect.

V. FINANCIAL IMPLICATIONS

Method

The Committee considered that it was very important to try to determine the impact of the recommended changes on lot costs and municipal taxes. Four cities, two towns and a county were surveyed in an attempt to measure the effects of proposed changes. Each municipality was asked to respond to a questionnaire on lot levies and development charges received from or committed by developers in respect of roads, recreation and parks, administration, sanitary sewer, storm sewer and water supply. Municipalities were asked to identify construction contributions made as part of development agreements as well as cash contributions. These figures were then related to the number of lots, hectares developed and municipal property taxes. It was not possible, in the limited time available, to request information for a whole series of years; therefore the years 1981, 1983 and 1985 were selected in the hope of capturing several representative years from which a fair average could be derived.

It is recognized that this is an inadequate sample, even if representative, to provide more than an 'order of magnitude' of the impact of recommended changes.

Results

Using the above approach it has been possible to suggest some of the changes that will occur should the recommendations of this report be adopted. However there is no way at present of estimating and measuring the overall future impact throughout the Province; information at this scale is not available at this time.

TABLE 1

ANALYSIS OF PROPOSED CHANGES TO DEVELOPMENT LOT LEVIES AND CHARGES

IMPACT OF PROPOSED CHANGES FOR 1985 ONLY

	Edmonton	Calgary	Red Deer	Spruce Grove	Okotoks
Total dollar costs transferred from developers to municipality ($ '000)	5	1,006	102	40	1
Total lots	623	1,615	224	31	3
Total municipal taxes ($ '000)	179,000	218,133	12,494	2,702	1,358

IMPACT ON DEVELOPERS, AND POTENTIAL SAVINGS TO BUILDERS AND HOME BUYERS

	Edmonton	Calgary	Red Deer	Spruce Grove	Okotoks
Dollar saving in lot costs. Potential reduction in annual mortgage payments (20 years at 11%)	8 1	623 70	456 51	1,282 145	333 38

IMPACT ON MUNICIPAL TAXPAYERS

	Edmonton	Calgary	Red Deer	Spruce Grove	Okotoks
Percentage increase in municipal taxes -- one time payment. Dollar increase of municipal taxes of average residence -- one time payment	0.00 .02	.46 4.19	.82 6.48	1.48 8.44	.07 .46
Dollar increase of municipal taxes on average residence -- cost debentured (20 years at 11%)	0.00	.52	.81	1.06	.06

Note 1. This analysis excludes any changes that may occur where municipalities elect to modify the methods of financing oversize and offsite installations.

Note 2. The impacts in 1985 are substantially less than the average for years 1981, 1983 and 1985 because the rate of development is slower and some charges have been reduced.

Note 3. Information supplied by the County of Strathcona indicates that they would not be affected by the Committee's proposal.

TABLE 2

ANALYSIS OF PROPOSED CHANGES TO DEVELOPMENT LOT LEVIES AND CHARGES

AVERAGE OF YEARS 1981, 1983, 1985

	Edmonton	Calgary	Red Deer	Spruce Grove	Okotoks
Total dollar costs transferred from developers to municipality($ '000)	561	1,521	189	126	59
Total lots	1,311	3,501	310	92	98
Total municipal taxes ($ '000)	153,719	186,131	10,778	2,352	1,238

IMPACT ON DEVELOPERS, BUILDERS AND POTENTIAL SAVINGS TO HOME BUYERS

	Edmonton	Calgary	Red Deer	Spruce Grove	Okotoks
Dollar saving in lot costs. Potential reduction in annual mortgage payments (20 years at 11%)	428	434	610	1,371	597
	48	49	69	155	68

IMPACT ON MUNICIPAL TAXPAYERS

	Edmonton	Calgary	Red Deer	Spruce Grove	Okotoks
Percentage increase in municipal taxes -- one time payment	.36	.82	1.75	5.36	4.76
Dollar increase of municipal taxes of average residence -- one time payment	2.32	7.59	13.59	31.68	35.32
Dollar increase of municipal taxes on average residence -- cost debentured (20 years at 11%)	.29	.95	1.71	3.98	4.44

Note 1. This analysis excludes any changes that may occur where municipalities elect to modify the methods of financing oversize and offsite installations.

Note 2. These averages include high collections in 1981.

Note 3. A number of municipalities have changed their policies and have reduced their per hectare or per lot charges since 1981. These averages are consequently higher than most municipalities are likely to experience in the future.

Note 4. Information supplied by the County of Strathcona indicates that they would not be affected by the Committee's proposals.

Expressed in terms of property taxes the impacts follow the same pattern but would be very small in terms of a typical residential property or change in annual property taxes. The largest impacts would appear to be for towns where the changes could add as much as $35 on average as a one-time charge to a reference (average) property or $4.50 per year on average to annual property taxes if the revenue was found by increasing debenture debt. In the cities of Edmonton, Calgary and Red Deer, the comparable figures were in the order of $13.60 annually and $1.70 per year respectively, see Table 2.

Road Contributions

The effect of the recommendations seems to be most significant in the area of roads. The picture is complicated by the different provincial grants available for different classes of road and for towns and cities. It is also complicated by the variety of definitions used by municipalities for their road systems. However, by far the majority of the total effects reported above are attributable to roads.

The largest impact will be on large towns where the cost of arterial roads has become a significant expense and where the grant structure for towns provides less support for this type of road. In Spruce Grove, for example, developer contributions that would be lost under the Committee's recommended formula, would be in the order of 4.5% of municipal taxes. The effect on new lot costs would be in the order of $1000.

On the other hand in the larger cities the impact on municipal taxes would be minimal, whilst the impact on per lot costs is in the order of $300 to $500.

VI. IMPLEMENTATION - ALTERNATIVE COURSES OF ACTION

The Committee has reviewed the three alternative courses of action, as set out on page 51 of the Nichols report, which might be taken to resolve the current uncertainties and concerns of municipalities and developers, namely:

1. **Status Quo** — by clarifying of ambiguities and minor changes in the list of facilities which can be the subject of levies and development charges.

2. **More Restrictive Legislation** — by strengthening the provisions of enforcement, specifying in detail what may and may not be the subject of levies and development charges and possibly specifying maximum amounts that can be charged.

3. **Deregulation** — by removing Provincial constraints and leaving the matter to be determined at a local level through negotiation.

It is the view of the Committee that the observations contained on pages 52 and 53 of the Nichols report are relevant and valid.

1. **Status Quo**

It is noted that many municipalities are reviewing their charges at this time and some are reducing them having regard to the market and without any legislative persuasion.

However, the Committee is of the opinion that minor adjustments and clarification to the Planning Act will not resolve many of the concerns and difficulties expressed by municipalities and developers.

The issues are complex, involving legal, financial and technical considerations. The provisions of the Planning Act now restrict the flexibility that may be desirable, are difficult to enforce, and consequently are being bypassed in many cases. While maintaining the status quo may not give rise to critical situations during the current period of slow growth, it is anticipated problems will escalate when development accelerates.

2. **More Restrictive Legislation**

It was agreed by all members of the Committee that legislation which endeavours to prescribe precisely what can and cannot be the subject of lot levies and development charges combined with strict provisions for enforcement may well cause more difficulties than those it is designed to remedy. Furthermore, it is likely that development approvals would be frustrated where a municipality does not wish to commit its own funds to costs it cannot recover from developers. There is a risk that municipalities might have to restrict the areas approved for development in order to limit their expenditures. The objective is to facilitate orderly and economic development not to discourage it. Because comprehensive regulation is unlikely to resolve the problems which have been identified and

is not in the Committee's view the best method of resolving such problems, this alternative is not recommended.

3. Deregulation

The Committee is further of the view that total deregulation by removing all Provincial constraints, leaving the contents of development agreements to be determined at a local level through negotiation would be unsatisfactory in that no protection or recourse would be available to a developer against arbitrary or unfair charges.

4. Modified Deregulation

The Committee recommends that the Province move in the direction of deregulation but with specific safeguards for developers.

A. Code of Practice

It is proposed that the constraints now contained in The Planning Act related to lot levies and development charges be removed and that a "Code of Practice" be adopted.

The Code of Practice could be instituted as guidelines by the Minister of Municipal Affairs in a non-statutory, informal manner similar to the guidelines for regional plans. Adherence to the guidelines would be a matter of voluntary co-operation on which the affected parties, namely the development industry and the municipalities, could report from time to time. This approach has the merit of minimizing regulation but is not recommended because it provides no formal framework within which inequitable practices can be appealed and rectified.

The Committee prefers, and recommend that The Planning Act provide for a Code of Practice. The Code should be adopted by means of an Order in Council setting out the general principles and guidelines as well as specific limitations to the extent necessary, similar in some respects to the specific and general provisions of the Subdivision Regulation.

The Code of Practice should contain those statutory provisions that it is possible to remove from current legislation, suitably modified by the recommendations of this report. It has not been possible or desirable to draft the Code of Practice - a task which is essentially technical and dependent upon the approval in principle of these recommendations.

However, the following approach appears feasible. Those parts of Section 76 dealing with the list of purposes for which charges are permitted, namely 76(2)(a), (b), (c) & (d) should be moved to the Code of Practice and amended as necessary. The general provision of 77(1) requiring an applicant to enter into an agreement should be subject to the provisions of the Code of Practice adopted by Order in Council. Subsections 77(1)(a), (b), (c), (d) and (e) and all of Section 77.1 should be removed and incorporated as necessary in the Code of Practice. Section 92 should be modified in a similar manner to Section 77. Finally, the Lieutenant Governor in Council should be provided with the authority to make provisions that will permit the introduction of a Code of Practice.

The above provisions would ensure that the requirements for municipal lot levy by-laws and agreements as conditions of development permit issuance and subdivision would remain in the statutes. All other matters would be prescribed by the Lieutenant Governor in Council. This would provide for considerably more flexibility in the administration of lot levies and development

charges and contributions than presently exists - an arrangement that the Committee views as very desirable.

B. Justification and Accountability

The Committee considers that although changes were made in the legislation in 1984 to improve accountability, additional measures are desirable and should be ensured by provisions in the Code of Practice.

1. A municipality should identify the specific works in respect of which a levy or development charge is to be required, including the cost or estimated cost, the anticipated date of construction, the area which will be subject to the levy or charge and the contribution, if any, which the municipality, senior governments or other contributors will make.

2. A developer or landowners who are or may be affected should have an opportunity to appear before Council and question or object to any charge or levy before it is incorporated in a bylaw or imposed.

3. Once the funds are received they should be ear-marked, together with the accumulated interest for the specific work.

4. Levies or charges should be limited to those works which it is expected will be required within 10 years. Mechanisms should be devised for the review and possible disposition of funds which are not spent within a 10 year period on the specific project for which the levy or charge was made.

C. Settlement of Disputes

The Committee recognizes that any statement of principles is subject to interpretation, and any guidelines may be inappropriate in certain circumstances. It therefore recommends that a mechanism be established to hear and determine any disputes and authority should be provided to waive the provisions of the Code where it would be deemed fair and reasonable.

Three alternative mechanisms for resolving disputes have been considered.

(i) Arbitration
(ii) The Alberta Planning Board
(iii) A Special Board

(i) Arbitration

This mechanism would avoid the need for any formal structure to be established. The Arbitrator or Arbitration Board is selected by the parties to hear and determine each case. Where a three man Board is desired and the arbitrators cannot agree on a Chairman, the Minister could make such an appointment.

This procedure has the advantage that the involvement of the Province is minimized and decision making is left at the local level. It also has the advantage that the arbitrators can be selected on the basis of their expertise and experience in development issues. The procedure could, however, prove costly and time consuming, especially if the municipality is reluctant to participate.

(ii) The Alberta Planning Board

The Alberta Planning Board is already established, and is regularly hearing and determining appeals and disputes under the Planning Act. It must have regard to the subdivision regulation, (and regional plans, general plans, etcetera), but is not bound by them. The procedures are relatively fast, informal and inexpensive. The Province pays the full cost of the Board's operations and for it to hear appeals in an urban centre near the land which is subject to the appeal. Legislation already exists which empowers the Lieutenant Governor to impose (or add to) the duties of the Board [Planning Act, Section 17(3)].

The Alberta Planning Board's experience in hearing appeals and disputes under the Planning Act, and the fact it is already established makes it a logical choice to hear development agreement appeals. Some members of the Committee expressed the view that these disputes should be heard by those with expertise and experience of the development industry due to the technical and financial considerations.

(iii) A Special Board

The establishment of a Special Board to hear and determine disputes related to development agreements and the 'Code of Practice' may be preferred. The proposed Board should be composed of representatives from the industry and municipal associations. The appointed members could appoint a Chairman or failing agreement, a Chairman could be appointed by the Minister.

It was considered that the Secretary to such a Board and the administrative services could be provided under the auspices of the Alberta Planning Board.

Such a Board could remove the criticism that Provincially appointed members are over-ruling decisions by locally elected councils and that decisions are inconsistent due to the fact that different Board members judge the merits of similar appeals in a different manner.

It would enable representatives of the industry and municipalities to largely self regulate their operations. Members could be selected who had special expertise and experience in the complex and technical issues related to development agreements. Such a Board would be well suited to advising the Minister from time to time on desirable amendments to the Code.

The Committee favours the Special Board.